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C O N F I D E N T I A L SECTION 01 OF 02 DHAKA 000018

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TAGS: [KCRM](#) [KDEM](#) [PGOV](#) [PINR](#) [PREL](#) [PTER](#) [BG](#)  
SUBJECT: ADVANCES IN FINANCIAL CRIMES LAWS FACE POSSIBLE  
MARGIN CALL IN THE COURTS

Classified By: Ambassador James F. Moriarty. Reasons 1.4 (b) and (d)

#### Summary

1. (C) Bangladesh's Caretaker Government (CTG) tried to improve Bangladesh's ability to combat money laundering and terrorist financing by issuing ordinances aimed at helping Bangladesh meet international standards in the area of financial crimes and increase the effectiveness of related law enforcement efforts. Recent court challenges, however, have highlighted the fact that these ordinances - like all of the 110 others passed under the Caretaker Government - will need ratification within thirty days by the new Parliament, which might be tempted to water them down through amendments. We plan to engage the new government on this issue early on to ensure that Bangladesh continues to move in the direction of effectively combating financial crime and has legislation to engage international allies in this common fight.

#### Status of CTG Legislative Initiatives

2. (C) On April 13, 2008, the CTG issued the Money Laundering Prevention Ordinance of 2008 (MLPO). The ordinance attempted to overcome the weaknesses of the earlier law (the Money Laundering Prevention Act of 2002 (MLPA) and to conform to international standards, in particular those established by the international Financial Action Task Force (FATF). On June 11, 2008, the CTG promulgated the Anti-Terrorism Ordinance (ATO). A first for Bangladesh, that ordinance, which targeted terrorist financing, was developed in keeping with international standards. The CTG released the two ordinances after extensive engagement with the international community in Bangladesh, including the DOJ Resident Legal Advisor's Office.

3. (C) Although not perfectly aligned with international standards, the MLPO and the ATO represented significant progress when compared to the previous anti-money laundering regime and the prior absence of any anti-terrorist financing structure. The MLPO offers a more focused law, concisely defining money laundering; providing a wider circle of financial institutions which must report on their activities to Bangladeshi authorities; delineating a list of predicate offenses which will open the door to possible money laundering prosecution; and establishing a Financial Intelligence Unit (FIU) at the Bangladesh Bank which will share information with foreign FIU on the basis of agreements and, hopefully one day, based upon Bangladesh's membership in the international association of FIU, the Egmont Group. The ATO criminalizes terrorist activity as a separate offense under Bangladeshi law. In the past, Bangladesh conducted

terrorist prosecutions under other criminal code provisions. The ATO also introduces anti-terrorist financing concepts into Bangladesh law.

#### Court Challenges and Parliamentary Action

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¶4. (C) The Bangladeshi judicial system has recently challenged the legitimacy of CTG-promulgated ordinances. In one such case involving a marriage ordinance, the court focused on Constitutional provisions regarding the President's ability to issue ordinances (Articles 93 and 58(D)) during periods when Parliament is not in session. According to the court, during such periods, the President could only promulgate ordinances related to holding national elections. The only exception to this rule occurred if urgent situations arose. Further, the court stated that "there is no such urgent situation in the country that the President should promulgate ordinances on other issues." In another recent case, a court found the ordinance establishing the Truth and Accountability Commission (TAC) to be unconstitutional. The court said that promulgating such an ordinance was a policy decision and that the CTG could not make any policy decision, citing Article 58(D) of the Constitution.

¶5. (C) In the cases described, higher courts of appeal issued temporary stays on the lower courts, orders. However, the constitutional challenge remains for virtually all CTG-promulgated ordinances, including the money laundering and anti-terrorist ones. In any event, under the Bangladesh constitution, all ordinances lapse if they are not ratified

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by a newly-elected Parliament within thirty days of its initial sitting. The Parliament may adopt the ordinances whole, in part, or not at all, leaving the ultimate fate and result for each an open question.

Comment

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¶6. (C) Taken broadly, the 110 ordinances promulgated by the CTG would help build a sounder democracy in Bangladesh, if ratified in their entirety by the incoming Parliament. More specifically, if the USG is to help the Bangladesh government deny space to terrorists, some sort of anti-money laundering and anti-terrorist legal framework is absolutely vital. Early on in interactions with the new government, post will urge the democratically elected government to build on the important reforms initiated by the CTG and pass the ordinances virtually intact. In particular, we will urge the new government to retain a legal framework for acting against terrorism by ratifying the anti-money laundering and anti-terrorism ordinances.

MORIARTY